

**BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE
STATE OF TENNESSEE**

IN THE MATTER OF:

TENNESSEE BEHAVIORAL HEALTH, INC.

**A Tennessee Prepaid Limited
Health Service Organization
222 Second Avenue North, Suite 220
Nashville, TN 37201**

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No. 02 255 TNCARE

FIRST AMENDED AGREED NOTICE OF ADMINISTRATIVE SUPERVISION

WHEREAS, Tennessee Behavioral Health, Inc., (hereinafter "TBH" or "PLHSO") is a Tennessee for-profit corporation holding a certificate of authority as a prepaid limited health service organization from the Department of Commerce and Insurance (hereinafter "Department" or "TDCI") pursuant to Tenn. Code Ann. §§56-51-154, 56-32-203(f), 56-51-106, and 56-51-107; and

WHEREAS, TBH entered into a Managed Care Contract Provider Risk Agreement with the Department of Mental Health & Developmental Disabilities (hereinafter "TDMHDD") and began to participate in the TennCare program as of July 1, 1996; and

WHEREAS, TDCI has jurisdiction over this PLHSO and over an Administrative Supervision of a PLHSO ("Supervision"). This Agreed Notice of Administrative Supervision ("Notice") and the provisions thereof are governed by Tenn. Code Ann. § 56-9-501 *et. seq.*, § 56-51-144 and Tenn. Comp. R & Regs. tit. Dept. of Commerce and Insurance Rule Chapter 0780-1-66.; and

WHEREAS, on January 14, 2003, TBH's ultimate parent company, Magellan Health

WHEREAS, on January 14, 2003, TBH's ultimate parent company, Magellan Health Services, Inc., (hereinafter "Magellan") filed with the United States Securities and Exchange Commission its Form 10-K Annual Statement for fiscal year ending September 30, 2002. Magellan reported a consolidated net loss of \$729.1 million for the fiscal year ended September 30, 2002, as compared to net income of \$24.6 million for the fiscal year ended September 30, 2001. Included in Magellan's losses was a charge of \$415.9 million related to the impairment of goodwill under Statement of Financial Accounting Standards (SFAS) No. 142; and

WHEREAS, Magellan is the ultimate parent of TBH and the Commissioner of Commerce and Insurance ("Commissioner") fears that Magellan's financial conditions may affect the financial stability of TBH; and

WHEREAS, on January 9, 2003, TDCI was advised by Charles D. Klusener, Vice President of TBH, and Andrew M. Cummings, Secretary for TBH, that TBH had distributed funds to its parent Magellan on October 4, 2002. This distribution was not reported on TBH's initial September 30, 2002 quarterly financial statement, but has been reported on a subsequent amended quarterly financial statement; and

WHEREAS, Tenn. Comp. R & Regs. tit. Dept. of Commerce and Insurance 0780-1-66 sets forth standards which the Commissioner may use for identifying insurers found to be in such condition as to render the further transaction or continuance of their business hazardous, financially or otherwise, to the public, their creditors or to holders of their policies or certificates of insurance; and

WHEREAS, Tenn. Comp. R & Regs. tit. Dept. of Commerce and Insurance Rule 0780-1-66-.03(1) provides standards which may be considered by the Commissioner to determine whether the continued operation of any insurer transacting an insurance business in this state might be

deemed to be hazardous, financially or otherwise, to the policyholders, creditors or the general public. Certain of these standards are applicable to affiliates of a PLHSO; and

WHEREAS, Tenn. Code Ann. § 56-51-154 makes the definition of “affiliate,” as provided by Tenn. Code Ann. § 56-32-202(1), applicable to a PLHSO; and

WHEREAS, it appears to the Commissioner that Magellan constitutes an “affiliate” under the definitions cited above; and

WHEREAS, on January 9, 2003, Commissioner of Commerce and Insurance Anne B. Pope issued a Notice of Administrative Supervision to TBH; and

WHEREAS, TDCI and TBH seek to amend and supersede that Notice of Administrative Supervision through this First Amended Agreed Notice of Supervision; and

WHEREAS, TBH receives significant contracted management, provider network, and other services from AdvoCare of Tennessee, Inc. (“AdvoCare”), an affiliate of Magellan; and

WHEREAS, Magellan and its affiliate AdvoCare, in an effort to provide a level of continuity of services to TBH, have agreed to do the following:

- a. AdvoCare will facilitate a direct contractual relationship between TBH and Affiliated Computer Services, Inc., the current claims processor for TBH;
- b. AdvoCare will facilitate a direct contractual relationship between TBH and ENA, the current manager of AdvoCare's website for data exchange with providers of outpatient case rated services;
- c. AdvoCare will effect a limited assignment of its provider contracts to TBH; and

WHEREAS, it appears that TBH has agreed to be subject to Supervision pursuant to the

terms of this Notice; and

WHEREAS, pursuant to Tenn. Code Ann. § 56-9-503(a) and § 56-51-144, it appears, in the Commissioner's discretion, that TBH should be placed under Supervision; and

WHEREAS, TBH does not admit the basis on which this Notice is issued and enters into this Notice for the purposes of settlement only, pursuant to Tenn. Code Ann. §56-9-501(a)(5); and

NOW, THEREFORE, it is AGREED by the Commissioner and TBH that TBH is hereby placed under Administrative Supervision of the Commissioner pursuant to Tenn. Code Ann. § 56-9-501 *et. seq.* The Commissioner is applying for and effectuating the provisions of Title 56, Chapter 9, Part 5. Pursuant to Tenn. Code Ann. § 56-9-503(b), TBH is hereby notified that TBH has a period of two hundred and forty (240) days commencing on the effective date of this Notice to comply with the requirements of the Commissioner set forth as follows:

- A. TBH must be able to demonstrate to the Commissioner's satisfaction that Magellan's condition no longer renders TBH subject to supervision as provided under Tenn. Code Ann. § 56-9-501 *et. seq.* and Tenn. Comp. R. & Regs. tit. Dept. of Commerce and Insurance Rule 0780-1-66-.03; and
- B. TBH must be able to demonstrate to the Commissioner's satisfaction that TBH is in compliance with all applicable statutory reporting, operational, and net worth requirements.

This Agreed Order shall be lifted immediately if, at any time within the two hundred and forty (240) day period after the effective date of this Notice, TBH is able to meet the requirements set forth in items A and B above. TBH shall be deemed conclusively to have satisfied the requirements of items A and B above by demonstrating to the satisfaction of the Commissioner: first the confirmation of a plan of reorganization by Magellan in any bankruptcy proceeding that is

commenced following the entry of this Notice; second that TBH has satisfied its contractual requirements related to timely claims processing, telephone response time, and network requirements for private facility and private individual provider retention; and third that TBH is in compliance with its statutory net worth requirement as of the date of its most recent monthly reporting period. This demonstration may be made no sooner than thirty (30) days following the date of confirmation of Magellan's plan of reorganization in bankruptcy.

Upon submission of information that demonstrates TBH's satisfaction of the conditions of supervision as identified in items A and B, the Commissioner shall have thirty (30) days from the date of receipt of the submission to determine if TBH has demonstrated that the conditions of supervision identified in items A and B have been abated. The Commissioner shall issue her determination in writing, which shall include the reasons for her determination. Should TBH disagree with the determination of the Commissioner, TBH may seek judicial review of the Commissioner's action, as provide under the Uniform Administrative Procedures Act, Tenn. Code Ann. §4-5-301 *et seq.* or otherwise as provided under applicable law. If the Commissioner fails to issue her determination within the thirty (30) period, TBH shall be deemed to have satisfied the conditions of Supervision identified above and this Notice shall be deemed lifted.

The specific terms of this Administrative Supervision are as follows:

1. Immediately upon execution of this Notice, the Commissioner shall petition the court in the action currently pending in the Chancery Court of Davidson County, styled State of Tennessee, ex rel. Anne B. Pope v. Tennessee Behavioral Health, et al., No. 03-117-I (the "Civil Action"), for dissolution of the Order of Seizure entered by the Court on January 10, 2003, and shall cause the Civil Action to be dismissed without prejudice. TBH shall pay the reasonable fees and expenses up to \$25,000 of the special deputy commissioner appointed by the Commissioner in

the Civil Action.

2. Under the provisions of Tenn.Code Ann. §56-9-505, the Commissioner may designate a person who will serve as an Administrative Supervisor (hereinafter the “Supervisor”). If the Commissioner makes such a designation, TBH agrees to pay one half of the fees and expenses of the Supervisor in carrying out this Notice.

3. The Commissioner may contract with consultants, such as claims specialists, computer/information systems specialists, accountants, actuaries or other persons whom the Commissioner and/or Supervisor deem necessary and able to aid in the supervision of TBH. These contractual services will be paid by the State of Tennessee.

4. The Officers, Managers, Directors, Trustees, Owners, Affiliates, Management Company, Employees or Agents of TBH and any other persons or related parties with authority or control over or in charge of any segment of TBH affairs, will cooperate with the Commissioner and the Supervisor in the carrying out of the Supervision. This cooperation shall include, but shall not be limited to the following:

- a. To reply promptly in writing (within two (2) business days) to any inquiry from the Supervisor, the Commissioner, or the Commissioner’s other agents as designated in writing, requesting such a reply.
- b. To make available to the Supervisor, the Commissioner, or the Commissioner’s other agents as designated in writing, any books, bank and investment accounts, documents, or other records - including any data residing on magnetic media or optical media - or information or property of or pertaining to TBH in its possession, custody or control. No person shall obstruct or interfere with the Commissioner in the conduct of this supervision.
- c. To respond promptly, fully and accurately to inquiries by the Supervisor or the Commissioner, or the Commissioner’s other agents as designated in writing, about operations or any other matters which the Supervisor or Commissioner deem important to this Supervision.
- d. To provide, upon request, direct access to a written listing of and immediate access to all of the property, assets, and estate and all other property of every

kind, wherever located belonging to TBH, including, but not limited to, offices maintained by TBH, rights of actions, books, contracts, electronic data, papers, evidences of debt, bank accounts, savings accounts, certificates of deposit, stocks, bonds, debentures and other securities, mortgages, furniture, fixtures, office supplies and equipment, and all real property of TBH, wherever situated, whether in the possession of TBH or its officers, directors, trustees, employees, consultants, attorneys, agents, affiliates or contractors.

- e. To provide direct access to a written identification of the location of all the items set out in d. above.
- f. To provide direct access to copies of correspondence to and from vendors for any delinquent accounts or notices of delinquency.
- g. To provide on-going current financial information on the condition of Magellan.
- h. To provide direct access to a schedule of the aging of TBH's accounts payable identified by vendor, subcontractor and provider – at a minimum showing amounts past due 30, 60, 90 and over 90 days.
- i. To provide full cooperation of TBH affiliates and officers, directors, agents, servants, employees and contractors during the period of supervision.
- j. To provide to the Commissioner or her designee and to the Deputy Commissioner of the TennCare Oversight Division of TDCI immediate notification in writing by Certified Mail of any administrative or legal action filed regarding any claim made against TBH by a provider or Participant [enrollee] which is related to TBH's responsibilities under the Managed Care Contract Provider Risk Agreement, including but not limited to, notice of any arbitration proceedings instituted between a provider and TBH. (See Sections 3.9.2 and 3.16 of the Managed Care Contract Provider Risk Agreement between the Tennessee Department of Mental Health and Developmental Disabilities and TBH.)
- k. To have TBH management meet with the Commissioner, her staff, and/or her designated Supervisor as requested.

5. The Commissioner, her designated Supervisor, the Commissioner's deputies, employees or duly commissioned examiners will undertake an on-site review and monitoring of TBH operations, including financial and claims processing operations.

6. It is not intended that issuance of this Notice restricts the rights or ability of the

Commissioner of Commerce and Insurance to discuss matters related to the operations or oversight of TBH or to release or discuss information or documentation that is required to be submitted to TDCI by all prepaid limited health service organizations operating in Tennessee, including, but not limited to, quarterly and annual financial filings, and requests for material modifications of the Certificate of Authority. Moreover, pursuant to 2002 Public Acts, Chapter 660, amending Tenn. Code Ann. § 56-9-504, financial solvency records of TBH shall be open to the public under the Public Records Act. Proprietary information, including, but not limited to, provider reimbursement information, remains protected by 2002 Public Acts, Chapter 880, Section 18.

7. It is not intended that issuance of this Notice restricts the rights or ability of the Commissioners of Commerce and Insurance, Mental Health & Developmental Disabilities, or Finance and Administration (hereinafter “TDFA”) to release or discuss information or documentation that is required to be submitted to the TDMHDD or TDFA by all prepaid limited health organizations contracting with the State of Tennessee TennCare Partners Program, including, but not limited to, reports and documents required to be filed with the TDFA TennCare Bureau.

8. The Commissioner will, upon the effective date of this Notice, provide a copy of this Notice and other appropriate documentation to the insurance departments of other states in accordance with Tenn. Code Ann. § 56-44-105, authorized representatives of the United States, representatives of the State Comptroller's Office, and the Speakers of the House and Senate of the Tennessee General Assembly.

9. The Commissioner may, upon the effective date of this Notice, provide other appropriate information and documentation to authorized representatives of the United States,

representatives of the State Comptroller's Office, and the Speakers of the House and Senate of the Tennessee General Assembly.

10. During the period of supervision, the TBH, either directly or indirectly through affiliates, contracted management companies, or others, may not do any of the following without the prior written approval of the Commissioner or the Commissioner's appointed Supervisor:

- a. Dispose of, convey or encumber any of its assets, capital, or its business in force;
- b. Withdraw any of its bank accounts;
- c. Lend any of its funds;
- d. Invest any of its funds;
- e. Transfer any of its property or declare any dividend;
- f. Incur any debt, obligation or liability;
- g. Merge or consolidate with another company;
- h. Enter into any new stop loss, excess loss, reinsurance contract or treaty;
- i. Make any material change in management; or
- j. Increase salaries and benefits of officers or directors or the preferential payment of bonuses, dividends or other payments deemed preferential.

11. In furtherance of the purposes of Paragraph 10 above, the provisions of any contractual arrangement between TBH and the Tennessee Department of Mental Health and Developmental Disabilities with respect to TBH's receipt and disbursement of funds are hereby incorporated by reference as if fully set forth herein and TBH's receipt and disbursement of funds shall occur in conformity with any such agreement and any amendments thereto.

12. During the period of supervision, TBH agrees to the following:

- a. To comply with Statutory Accounting Principles in all future financial filings;

b. To comply with its statutory and contractual minimum net worth requirements. Additionally, TBH will maintain a net worth in an amount that exceeds the statutory net worth by two million dollars (\$2,000,000.00). If at any time TBH's net worth falls below an amount that is \$2 million in excess of the minimum net worth requirement as required by this provision, TBH shall increase its net worth in order to attain compliance herewith within fifteen (15) days after notice of deficiency by the Commissioner. If at any time TBH believes its net worth may drop below its enhanced net worth requirements, it will immediately notify the Commissioner and her designated Supervisor. If TBH fails to maintain its enhanced net worth and fails to cure such deficiency within the fifteen (15) day period noted above, the Commissioner reserves the right to seek available remedies under the provisions of Tenn. Code Ann. 56-51-101 *et seq.* and 56-9-101 *et seq.*

c. To comply at all times with the PLHSO Act, codified at Tenn. Code Ann. Title 56, Chapter 51.

13. If TBH fails to maintain its minimum statutory net worth requirement and fails to cure such net worth deficiency within five (5) business days after receipt of written notice from the Commissioner, TBH shall be deemed to be in such condition that the further transaction of business would be hazardous financially to its policyholders, creditors or the public and the Commissioner shall be entitled forthwith to petition the Chancery Court for immediate entry of a Consent Order of Rehabilitation and Injunction pursuant to Tenn. Code Ann. §56-9-301, *et seq.* and Tenn. Code Ann. §56-51-144(a) granting the Commissioner the rights afforded the Commissioner as rehabilitator under applicable law. TBH hereby waives its right to contest any such petition provided it comports with the requirements of this Notice.

14. Nothing in this Notice shall preclude the Commissioner and TBH from amending, rejecting or modifying this Notice by written agreement. Furthermore, nothing in this Notice shall prevent the Commissioner or other State authorities from instituting any other remedies available to them under law with respect to TBH.

15. Notwithstanding any provisions herein to the contrary, all terms and conditions contained herein shall be liberally construed to effectuate the regulatory purposes and objectives of TDCI.

16. Notwithstanding any provisions herein to the contrary, TDCI expressly and specifically retains its authority to take any regulatory action it deems appropriate, and in no way shall this order be construed to estop the Department or its officials from fulfilling their regulatory obligations.

17. Action of the Commissioner applying and effectuating the provisions of Title 56, Chapter 9, part 5 is subject to review pursuant to applicable state administrative procedures under the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5 of the Tennessee Code Annotated.

18. Pursuant to Tenn. Code Ann. § 56-9-503(d), if, after notice and hearing, it is determined that the conditions giving rise to the supervision still exist at the end of the supervision period specified herein, the Commissioner may extend such period.

19. All other rights and/or powers granted to the Commissioner pursuant to Tenn. Code Ann. §56-9-501 *et seq.*, are hereby reserved.

20. Based upon the facts cited herein, the Commissioner deems that it is in the best interest of the public that this Notice of Supervision, the proceedings, hearings, notices, correspondence, reports, records or other information relating to the supervision that are not

to Tenn. Code Ann. § 56-9-504, as amended by Public Acts 2002, Chapter 660 unless otherwise required to be maintained as confidential under federal and/or state law.

ENTERED and EFFECTIVE BY CONSENT, this the 11th day of February, 2003.

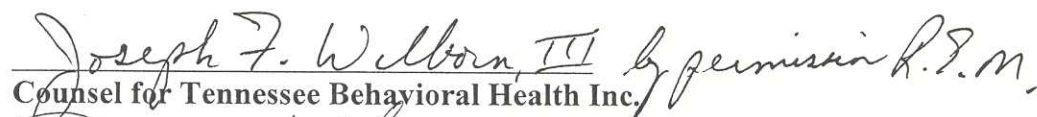


PAULA A. FLOWERS, Commissioner
Department of Commerce & Insurance



CHARLES D. KLUSENER, Vice President
Tennessee Behavioral Health, Inc.

APPROVED FOR ENTRY:


Counsel for Tennessee Behavioral Health Inc.


PATRICIA L. NEWTON

Acting Deputy Commissioner, TennCare Oversight Division
Department of Commerce & Insurance
State of Tennessee


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